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VIA ELECTRONIC MAIL

July 30, 2021

Ms. Princy Doss  
Director of Policy, Planning and Public Information  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219  
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Mr. Jay Withrow, Director  
Division of Legal Support, VPP, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)

Re: Comments of the Virginia Poultry Federation Regarding Adoption of Proposed Amendments to Permanent Standard for COVID for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Dear Ms. Doss and Mr. Withrow:

I am writing on behalf of Virginia Poultry Federation (VPF) concerning the referenced matter.

VPF is a statewide trade association representing all sectors of the poultry industry. Virginia's largest agricultural sector, the poultry industry contributes about \$13 billion annually to the Virginia economy; supports the livelihood of some 1,100 family farms; and employs more than 15,000 people.

Poultry plants in Virginia were successful in implementing COVID-19 prevention measures well PRIOR to adoption of the Emergency Temporary Standard (ETS) last summer, and will continue to make worker safety a top priority. According to data posted by the Virginia Department of Health (VDH), about 90 percent of cases among poultry workers occurred in April and May 2020, with a dramatic decline after that, even as total Virginia cases increased. The data show that the industry's implementation of OSHA, CDC, and VDH guidance was successful. In addition to our successful implementation of protective measures when the pandemic struck last

spring, our industry has worked diligently to comply with the ETS and, subsequently, the Permanent Standard for COVID for Infectious Disease Prevention.

As you know, VPF previously urged the Virginia Department of Labor and Industry (DOLI) not to promulgate these standards, setting forth our reasons in detailed comments to DOLI. We noted the changing scientific understanding of the novel COVID-19 and contended that guidance issued by the OSHA and CDC, which are updated with regularity, is the most appropriate mechanism to guide prevention measures.

We further contended in our previous comments that Virginia employers have a general duty under the Occupational Safety and Health Act of 1970 to keep their workplaces free from recognized hazards that cause or are likely to cause death or serious physical harm (the general duty clause). 29 U.S.C. § 654(a)(2) (see Va. Code § 40.1-51.1A- “It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.”). Each of these regulations and statutes is clear and enforceable. If a Virginia employer failed to take action to protect its workers from COVID-19, as recommended by OSHA or the CDC, DOLI’s Occupational Safety and Health Division (VOSH) could cite the company for violation of the general duty clause or another existing regulation.

These and other viewpoints and facts set forth in our previous comments remain the same, and we reiterate them herein. With the proliferation of vaccinations, reduced rates of infections, and termination of the state of emergency, we believe that DOLI and its Safety and Health Codes Board should eliminate, rather than amend, the permanent standard.

Alternatively, DOLI and the Board should consider eliminating everything in the existing permanent standard except a simple requirement that employers follow CDC guidelines. At the very least, it is paramount that any standard retained should contain the substitute language for 16VAC25-220-10.E concerning CDC compliance as requested by the Governor in his July 1, 2021 **Review of the Proposed Amendments to the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 That Causes COVID-19, §16 VAC 25-220, Adopted by the Virginia Safety and Health Codes Board (Board) on June 29, 2021.**

Additionally, at 16VAC25-220-60, the Board proposes to replace the section for existing requirements for “medium” risk workplaces with the following titled section: “Requirements for higher-risk workplaces.” It lists poultry plants among those workplaces covered under the new section. In the existing standard, poultry plants are considered “medium risk.” We are concerned about the negative perception and potential confusion your proposal creates by reclassifying sectors currently designated “medium” risk as “higher-risk.” In the case of poultry plants, the data on COVID cases among workers would suggest that these worksites now present

a fairly low risk. We request that you label this section something other than “higher-risk.” We would suggest something like, “Workplaces of unavoidable close contact.”

Please let me know if you have any questions or would like any additional information. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Hobey Bauhan".

Hobey Bauhan  
President